

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8810 of 2007
WITH
SPECIAL CIVIL APPLICATION No. 14564 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

Sd/-

HONOURABLE MR.JUSTICE K.A.PUJ

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

KACHRABHAI KALABHAI RAVAT & 49 - Petitioners
Versus

A.M.C. THRO' ESTATE AND CITY DEV. - Respondent

Appearance :

1. S.C.A. No. 8810 of 2007

MR YATIN OZA, SENIOR ADVOCATE WITH MR APURVA R KAPADIA WITH MS SRUSHTI A THULA for Petitioners.
MR PRASHANT G DESAI for Respondent.

2. S.C.A. No. 14564 of 2007

MR YATIN OZA, SENIOR ADVOCATE WITH MR ASHISH B. DESAI
for Petitioners.

MR PRASHANT G DESAI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/08/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. Since common issues of facts and law are involved in both these petitions and since both these petitions are heard together, the same are being disposed of by this common judgment and order.
2. Special Civil Application No. 8810 of 2007 is filed by in all 50 petitioners, under Article 226 of the Constitution of India praying for issuance of a writ of mandamus or writ of certiorari or any other appropriate writ, order or direction to quash and set aside the notices dated 26.03.2007 issued by the respondent Corporation and to further restrain them permanently from demolishing the huts and residences of the petitioners.
3. It is the case of the petitioners that either they or their forefathers purchased the lands in question from their respective owners during the period from 1940 to 1950. The

respondent Corporation has issued identity cards in their favour in the year 1976. Resolution No. 544 came to be passed on 17.08.1976 by the respondent Corporation stating that the persons who are residing at the same places prior to the year 1976, would be given identity cards and in the future, if they are to be shifted, then in that case, they would be given alternative accommodation by the respondent Corporation. It is also their case that right from beginning, they have been paying tax to the respondent Corporation and ration cards have also been issued in their favour. The Election Commission has also issued identity cards in favour of the petitioners. Despite this fact and without providing any alternative accommodation, notices were issued by the respondent Corporation to the petitioners for demolition of their huts-cum-residence on 26.03.2007 which is under challenge in the present petition.

4. Similarly, Special Civil Application No. 14564 of 2007 is filed by in all 62 petitioners under Article 226 of the Constitution of India praying for issuance of a writ of mandamus or writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the notices dated 25.05.2007 issued by the respondent Corporation and further restraining them permanently from demolishing the huts and residences of the petitioners. Here also, it is the case of the petitioners

that either they or their forefathers reside at the lands in question for the last more than 40 to 50 years. The respondent Corporation has issued identity cards in their favour in the year 1976. Resolution No. 544 came to be passed on 17.08.1976 by the respondent Corporation on 17.08.1976 stating that the persons who are residing at the same places prior to the year 1976, would be given identity cards and in the future, if they are to be shifted, then in that case, they would be given alternative accommodation by the respondent Corporation. It is also their case that since the year of inception, they have been paying the tax to the respondent Corporation and ration cards have also been issued in their favour. The Election Commission has also issued identity cards in favour of the petitioners. Despite this fact and without providing any alternative accommodation, notice was issued by the respondent Corporation to the petitioners for demolition of their huts-cum-residence on 25.05.2007 which is under challenge in the present petition.

5. On behalf of the respondent Corporation, affidavit-in-reply is filed in both these petitions on 18.07.2007 and opposed the petitions. So far as Special Civil Application No. 8810 of 2007 is concerned, it is stated that the plot situated at Final Plot No. 536. T.P. Scheme No. 28 (Nava Vadaj) has been reserved for Community Hall under the Town Planning Scheme. It is

further stated that the preliminary Town Planning Scheme No. 28 (Nava Vadaj) was sanctioned on 27.01.1981 and final scheme has been sanctioned on 05.04.1982. Since the Town Planning Scheme is sanctioned under Section 65 of the Gujarat Town Planning & Urban Development Act, 1976, the same has become part of the Act. The land in dispute i.e. Final Plot No. 536 is vested in the Corporation free from all encumbrances and, therefore, the petitioners have no right over the said plot. It is further stated that the Plot No. 536 is reserved for Community Hall in the Town Planning Scheme and the respondent Corporation being the implementing authority, is duty bound to implement the Scheme by way of construction of Community Hall. It is further stated that the notices dated 26.03.2007 were issued to the occupiers of the said plot and they were asked to produce the card, survey slip etc. documentary evidence with regard to their being eligible for alternative accommodation as per the Scheme of the Corporation of 1976. The occupiers were also issued notices under Section 68 read with Rule 33 in the year 1983. In the year 1983, there were 97 occupants on the disputed land. At the time of widening of Town Planning Road carving from OP No. 56/3, Town Planning Scheme No.28 (Nava Vadaj), the occupiers who were affected due to widening of road were rehabilitated at the disputed site as per the Resolution No. 471 of 1989 - 90 of the Standing Committee of the

Corporation. In that view of the matter, other 42 persons were rehabilitated at the present site. It is further submitted that in response to the notices issued by the Corporation dated 26.03.2007, only 18 persons have applied to the Corporation for alternative accommodation by producing the available documentary proof with them. The Corporation has not yet scrutinised their applications and the documentary evidence with regard to their being eligible for alternative accommodation. It is reiterated that only those persons who will meet the criteria of 1976 Scheme would be offered alternative accommodation. It is further stated that the Corporation has already decided to rehabilitate the eligible occupants at Final Plot No.609 + 615, Town Planning Scheme No. 23 (Sabarmati). Lastly, it is submitted that the petitioners have not challenged the provisions of the Town Planning Act and in that view of the matter, the petitioners have no right to agitate before this Court about non-implementation of the Town Planning Act.

6. So far as Special Civil Application No. 14564 of 2007 is concerned, affidavit-in-reply is filed on 22.06.2007 and the petition is opposed. The Corporation has challenged the fact stated and averments made in the petition and denied the fact that the petitioners are occupying the huts for the last more than 50 years. It is stated that some of the petitioners are

occupying the Town Planning Scheme road which is going from Juna Vadaj to Gandhi Ashram. They are occupying the main road which is going towards the Gandhi Ashram and causing immense traffic problem. So far as these hutments are concerned, they have lost the title, if any, over the land in question. It is further stated that earlier there was a small bridge, called Dandi Pull. However, in 1985-86, the Corporation decided to construct Parikshit Bridge and, therefore, the Corporation requested for acquiring the land for Parikshit Bridge. The land of Survey Nos. 508, 509 & 510 were acquired under the Land Acquisition Act in 1986 and at that time, the entire land of Survey Nos. 508, 509 & 510 were the open land. So far as this petition is concerned, the hutments are situated on Survey Nos. 508 and 509 and on the Nala road which was going towards the Dandi Pull. It is further stated that in 1965, the Corporation has prepared the plan and made survey and at that time, land bearing Survey Nos. 508, 509 as well as Nala road were open and no hutments were there. After the land was acquired by the Corporation and the bridge was constructed, the hutments have occupied Survey Nos. 508 & 509 and some portion of Nala Road which is going towards Dandi Pull. The crematorium is on Final Plot No. 574 and the Corporation intends to develop the burial ground just adjacent to the crematorium. The area occupied by the hutments is required

to be used for developing the garden and also to have a direct access to the crematorium. The petitioners have encroached upon the land only after 1986. However, only with a view to give the opportunity, the respondent Corporation issued notices on 25.05.2007 asking the hutment dwellers to approach the Corporation with the evidence of survey slip which is made by the Corporation so as to show that they were residing at the said place prior to 1976. Notices are also served by the Corporation to the hutment dwellers. However, none of the petitioners or other occupants have approached the Corporation with any evidence or survey slip and they have directly approached this Court. Some of the evidences produced before this Court were not produced before the Corporation nor any other evidence was produced. The Corporation has already ear-marked the area for alternative accommodation to be given to them. It is further stated that the Corporation is providing the alternative accommodation in the same area i.e. Behind "Supath Building" within the radius of 1 Km. from the place where they are occupying at present and for getting alternative accommodation, it is obligatory for them to produce the evidence i.e. survey slip etc. to prove that they were occupying prior to 1976. It is further stated that under Sections 230 & 231 of the BPMC Act, the power is given to the Commissioner even to remove the encroachment without

issuing the notice which is erected over any street or any open channel contrary to the provision of the BPMC Act.

7. Lastly, it is stated that the petitioners have encroached on the Town Planning Scheme road as well as the municipal plot illegally even then the Corporation is ready to provide alternative accommodation if they are occupiers prior to 1976 and, therefore, notices were issued asking them to produce necessary evidence for that purpose. Since they have not challenged the provision of the Town Planning Act, the petitioners have no right to agitate before this Court about non-implementation of the Town Planning Act. The petition is, therefore, required to be dismissed.
8. Mr. Y. N. Oza, learned Senior Counsel appears with Mr. Apurva R. Kapadia, Ms. Srushti A. Thulja and Mr. Ashish B. Desai for the petitioners. Mr. Prashant G. Desai, learned advocate appears for the respondent Corporation.
9. After having heard learned advocates appearing for the respective parties and after having gone through the memo of petitions, affidavit-in-reply, rejoinder affidavit and the documents produced before the Court, it appears to us that the petitioners have mainly challenged the notices issued by the respondent Corporation on 26.03.2007 in Special Civil Application No. 8810 of 2007 and notices dated 25.05.2007 in

Special Civil Application No. 14564 of 2007. Despite the fact that several opportunities were given to the petitioners, they were not in a position to establish their ownership rights over the properties nor they were in a position to produce any title to the properties. The petitioners are, therefore, considered to be encroachers. Even then the respondent Corporation has made it very clear in the reply that if there was any document in possession of the petitioners showing that they have been staying at their present premises prior to 1976, in that case as per the Scheme framed by the Corporation, they are providing alternative accommodation to them. The documentary evidences which are produced before the Corporation by some of the petitioners showing their stay prior to 1976 were under the scrutiny of the Corporation and it was admitted before the Court in the reply that those persons will be given alternative accommodation. In view of the stand taken by the Corporation in the affidavit-in-reply, nothing further is required to be done in the present petitions.

10.As far as legal submissions made by Mr. Oza with regard to the challenge to the vires of the Town Planning Scheme being violative of the constitutional provisions contained in Section 243 ZE of the Constitution of India, we have already discussed at length this issue in our judgment and order of

even date passed in Special Civil Application No. 24715 of 2006 and for the reasons recorded therein, we are of the view that the Town Planning Scheme sought to be implemented by the respondents pursuant to the development plan is not ultravires the Constitution.

11. We, therefore, do not find any substance or merits in any of these two petitions. Both these petitions are accordingly dismissed. Notice discharged. Interim relief granted earlier stands vacated.

Sd/-

[M. S. SHAH, J.]

Sd/-

[K. A. PUJ, J.]

12. At this stage, Mr. Y. N. Oza with Ms. Srushti A. Thula requests for a certificate fitness under Article 132 of the Constitution of India and also prays for extension of the ad-interim relief which was operating during pendency of the petition.

13. Mr. P. G. Desai, learned counsel for the Corporation opposes the request.

14. Having heard the learned counsel for the parties, we do not find that the case involves a substantial question of law as to

interpretation of the Constitution which needs to be decided by the Apex Court, because the question has already been decided by the Apex Court in **Shanti G. Patel & Ors. V/s. State of Maharashtra and Ors., 2006 (2) SCC 505.**

15.As regards the request for extension of the ad-interim relief, in the facts and circumstances of the case, and considering the fact that the petitioners are hutment dwellers, the ad-interim relief granted earlier shall continue till 30th September, 2007.

Sd/-

[M. S. SHAH, J.]

Sd/-

[K. A. PUJ, J.]

Savariya